IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/04/2004

Coram

The Honourable Mr. B. SUBHASHAN REDDY, Chief Justice
and
The Honourable Mr. Justice K. GNANAPRAKASAM

W.P. No.33493 of 2003
and W.P.Nos., 35205, 35517, 35691, 35692 and 35825 of 2003
and
W.P.M.P. Nos.40556, 42562, 43720, 45348 to 45350, 42791, 42792,
43882 , 43181, 43366 to 43369, 43544 and 43545 of 2003

W.P. No.33493 of 2003

1. C.S. Kuppuraj
2. S.M. Arasu
3. T.S. Balasubramanian
4. P. Krishnan ... Petitioners

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Public (Buildings) Department,
CHENNAI - 600 009.

2. The Chennai Metropolitan Development Authority,
rep. by its Member Secretary,
Thalamuthu Natrajan Maligai, Egmore,
CHENNAI - 600 008.

3. The Commissioner,
Corporation of Chennai,
CHENNAI - 600 003.

4. The State of Tamil Nadu,
rep. by its Secretary to Government,
Public Works Department,
Fort St. George, CHENNAI - 9.

5. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Housing and Urban Development,
Fort St. George, CHENNAI - 9.

6. The Anna University,

rep. by its Registrar,
Guindy, Chennai - 600 025.

7. The University of Madras,
rep. by its Registrar,
Kamaraj Salai, Chennai - 600 005.

8. The Science City Authority,
rep. by its Vice Chairperson,
Directorate of Technical Education Buildings,
Chennai - 600 032.

9. The Madras School of Economics,
rep. by its Director,
Chennai - 600 032.

10. The State of Tamil Nadu,
rep. by its Secretary to Government,
Dept. of Education,
Science & Technology (S & T) Dept.
Fort St. George, CHENNAI - 9.

11. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Higher Education,
Fort St. George, CHENNAI - 9.

12. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Environment & Forests,
Fort St. George, CHENNAI - 9.

13. The Chief Wildlife Warden,
Panagal Buildings, Chennai - 600 015.

14. The Council of Architecture,
rep. by its Registrar,
Habitat Centre,
New Delhi.

15. The Union of India,
rep. by its Secretary to Government,
Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, NEW DELHI.

16. The Union of India,
rep. by its Secretary to Government,
Housing & Urban Development,
NEW DELHI.

17. The Chennai Metropolitan Water
Supply & Sewerage Authority,
Rep. by its Chairperson,
No.2, Pumping Station, Off Mount Rd.
CHENNAI - 600 002. ... Respondents

Petition under Article 226 of Constitution of India for the issuance of Writ of Mandamus for the reasons stated therein.

W.P. No.35517 of 2003

M/s.Ramaniyam Real Estates Ltd.
Chennai - 600 020. ... Petitioner

Vs.

1. The Union of India,
rep. by its Secretary to Government,
Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, NEW DELHI.

2. The Chennai Metropolitan Development Authority,
rep. by its Member Secretary,
Thalamuthu Natrajan Maligai, Egmore,
CHENNAI - 600 008.

3. The Tamil Nadu Pollution Control Board,
rep. by its Chairman,
Guindy, CHENNAI - 600 032.

4. The Chennai Metropolitan Water
Supply & Sewerage Authority,
Rep. by its Chairperson,
No.2, Pumping Station, Off Mount Rd.
CHENNAI - 600 002.

5. The Commissioner,
Corporation of Chennai,
CHENNAI - 600 003. ... Respondents

Petition under Article 226 of Constitution of India for the issuance of Writ of Declaration for the reasons stated therein.

W.P. Nos.35205, 35691, 35692 and 35825 of 2003

Foundation for Fair Practices in
Property Development (FAIRPRO)
Rep. by its Secretary, M.S. Raja Manickam,
Chennai - 600 018. ... Petitioner in WP 35205/2003

Sheikh G. Mohideen ... Petitioner in WP 35691/2003
S. Abdul Ravoof ... Petitioner in WP 35692/2003
A.A. Abdul Khaliq ... Petitioner in WP 35825/2003

Vs.
1. The Union of India,
rep. by its Secretary to Government,
Ministry of Environment & Forests,
NEW DELHI.

2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Environment & Forests,
Fort St. George, CHENNAI - 9.

3. The State of Tamil Nadu,
rep. by its Secretary to Government,
Municipal Administration Department,
Fort St. George, CHENNAI - 9.

4. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Housing and Urban Development,
Fort St. George, CHENNAI - 9.

5. The Tamil Nadu Pollution Control Board,
rep. by its Chairman,
Guindy, CHENNAI - 600 032.

6. The Chennai Metropolitan Development Authority,
rep. by its Member Secretary,
Thalamuthu Natrajan Maligai, Egmore, ... Respondents in
CHENNAI - 600 008. all petitions.

Petitions under Article 226 of Constitution of India for the issuance of Writ of Declaration for the reasons stated therein.

For Petitioners in W.P. No.33493 : Mr. Sriram Panchu, S.C
of 2003 for M/s.T. Mohan

For Petitioner in W.P. No. 35205 : Mr. Mohan Parasaran, S.C.
of 2003 for M/s. R. Parthasarathy

For Petitioner in W.P. No. 35517 : Mr. R. Thiagarajan, S.C.
of 2003 for M/s. S. Sundaresan
For Petitioners in W.P. Nos. 35691 : Mr. R. Thiagarajan, S.C.
and 35692 of 2003 for Mr. P.V. Ramachandran

For Petitioner in W.P. No.35825 of : Ms. R. Latha

2003

For Respondent/Govt. of Tamil Nadu : Mr. N.R.Chandran, A.G.
assisted by
Mr. V. Raghupathi, G.P.,
Mr. K.A. Ravindran for CMDA,
and
Mr. P. Sundaram &
Mrs. P. Bagyalakshmi for
Chennai Corporation

For Respondent/Central Govt. : Mr. V.T.Gopalan, Addl. S.G.
assisted by
Mr. P. Wilson, ACGSC

For Respondent/Anna University : Mr. G. Masilamani, S.C.
for M/s.G.M. Mani Associates

:J U D G M E N T

THE HONOURABLE THE CHIEF JUSTICE

Justiciability of Governmental decision to construct a new Secretariat at Kottuppuram of Chennai city is a question for consideration in these matters. The further question is whether a draft notification issued under Environment (Protection) Rules, 1986, can be put into action even before its emergence as a final notification under subclause (d) of sub-Rule 3 of Rule 5 thereof.

2. The Secretariat of the Government of Tamil Nadu is presently located in Fort St.George, Kamarajar Salai. Apart from the building constructed during the British regime, new structures were erected later during 1970s. The State Government felt that accommodation was not sufficient and that the existing structures, be it old or the one constructed during 1970s, are not in good condition and that a new Secretariat building was necessary, both in terms of quantity and quality of accommodation. Earlier, the State Government thought of constructing a new Secretariat in the property occupied by Queen Mary's College, which is a few buildings away from the present Secretariat. But there was spate of litigations in W.P. Nos.10750 of 2003 etc. batch before this Court and because of the interim orders, status quo had to be maintained and later on, the Government had reconsidered the matter regarding location of a new Secretariat building and then changed the venue to the present area at Kotturpuram and issued G.O. Ms. No.1080 , Public (Buildings) Department, dated 1.9.2003. We feel it apt to extract the same.
"ABSTRACT
Secretariat Buildings - Construction of a new full-fledged Secretariat Complex along with the Legislative Assembly Hall - Orders issued.

PUBLIC (BUILDINGS) DEPARTMENT
G.O. Ms. No.1080 Dated the 1st September, 2003

ORDER:-
The present Secretariat consists of the main building constructed in 1781 A.D. and the Namakkal Kavignar Maaligai constructed in 1975. The Namakkal Mavignar Maligai building was designed and constructed just as an office accommodation without any of the state-of-the-art facilities that are required of a modern Secretariat. The interior of the Namakkal Kavignar Maligai building has developed cracks and leakages at several places putting the staff to great difficulty in attending to their work. There is no space to put up any new building in the existing campus. In view of the major problem of shortage of space, structural defects and the lack of other facilities in the existing buildings of the Secretariat, the Government has been considering the construction of a new Secretariat Complex for some time past. The States like Karnataka, Andhra Pradesh and Gujarat have got imposing Secretariat buildings with all modern facilities. The Government of Kerala has also built up a separate Legislative Assembly complex for the State. Considering all these factors, the Government has decided to construct a new Secretariat complex along with the Legislative Assembly Hall for Tamil Nadu with all facilities.

2. After considering various options, it was decided to identify a suitable site which is free from restrictions by any State or Central Regulations so that a new modern Secretariat Complex can be constructed with the next two to three years. Accordingly, the site in Kottur village of Mylapore Triplicane Taluk of Chennai District comprising certain lands belonging to Anna University, Government Date Centre and the Madras University, measuring about 43.20 acres has been identified for the purpose of locating the new Secretariat Complex as detailed below:-

Kottur village:
Extent Owned by

Block No.1, TS No.1/2 - 18.40 acres Government
Block No.1, TS No.1/1 - 20.38 acres Anna University
Block No.7, TS No.1 - 1.14 acres Anna University
Block No.2 - 0.64 acres Anna
University
Block No.1, TS No.2 - 2.23 acres Madras University
Block No.7, TS No.2 - 0.41 acres Madras University

Total - 43.20 acres

Out of the total extent of 43.20 acres, 22.16 acres belong to the Anna University and 2.64 acres belong to the Madras University. The exact area will be determined based on field measurement at the time of actual take over. The matter was examined in detail in consultation with the Higher Education Department and the Chennai Metropolitan Development Authority, Chennai. The Higher Education Department has forwarded the resolutions passed by the Syndicates of the Anna University and the Madras University to part with the lands owned by them for the purpose of constructing a new Secretariat Complex.

The Syndicates of the Anna University and the Madras University have resolved to hand over the lands indicated above to the Project and accept alternate lands.

3. The Government, after careful consideration has decided to construct a new full-fledged Secretariat Complex including Legislative Assembly Hall and a big Conference Hall with a total floor space of about 10 to 12 lakhs sq.ft. in the site measuring about 43.20 acres mentioned in para 2 above and to provide equal extent of alternate site to the Anna University and the Madras School of Economics in lieu of the lands proposed to be taken from them for the new Project. The Government accordingly pass the following orders in pursuance of the above decision.

(i) A new full-fledged Secretariat Complex including Legislative Assembly Hall and a big Conference Hall with a total floor space of about 10 to 12 lakhs sq.ft. will be constructed in the site measuring about 43.20 acres comprising the lands owned by the Anna University, the Madras University and the Government Date Centre as detailed in para 2 above.

(ii) Alternate sites in Venkatapuram and Adyar villages of Chennai District be identified in the lands owned by the Highways Department and the Directorate of Technical Education along the Sardar Patel Road for handing over to the Anna University and the Madras School of Economics in lieu of the

lands proposed to be taken as mentioned in para 2 above for the Secretariat Complex Project. The compensatory land to be allotted to the Anna University should be equal to the extent of the land proposed to be taken over from it.

(iii) One of the newly constructed bungalows on the Greenways Road will be handed over to the Madras University to be used as the official residence of the Vice Chancellore, Madras University.

(iv) Suitable buildings will be constructed at Government cost for relocating the Madras School of Economics, the buildings of the Anna University and other buildings. These buildings will be included as a part of the new Secretariat Complex Project and will be constructed simultaneously.

4. The Government also directs that the Chennai Metropolitan Development Authority be entrusted with the work of selecting the architects and the construction agency for both the new Secretariat complex and also the other buildings for the Anna University and the Madras School of Economics through appropriate tender process, monitoring the construction work, mobilizing the required funds for the projects etc.

5. The Chennai Metropolitan Development Authority, Chennai, is also authorized to mobilize the required funds by approaching the Financial Institutions like the HUDCO. The Member Secretary, Chennai Metropolitan Development Authority is requested to take urgent action as per the orders contained in para 4 above and to send the conceptual architectural design proposals of the new Secretariat Complex and the buildings to the Government before 5.10.2003 for selection.

6. This order issues with the concurrence of Finance Department vide its U.O. No.2886/FS/P/2003, dated 1st September, 2003.

(By ORDER OF THE GOVERNOR)

Lakshmi Pranesh
Chief Secretary to Government"

3. Pursuant to the above decision, tenders were called for and the last date for submission of tenders was fixed as 30.9.2003. Six tenderers responded and, on evaluation thereof, one Mr. C.R. Narayana Rao, Chennai, was selected to submit the design of new Secretariat Complex vide G.O. Ms. No.1184, Public (Buildings) Department, dated 8.10.20 03. We feel it apt to extract G.O. Ms. No.1184.

"ABSTRACT

Secretariat Buildings - Construction of a new full-fledged Secretariat Complex along with the Legislative Assembly Hall - Selection of architectural design and the architect - Orders issued.

PUBLIC (BUILDINGS) DEPARTMENT

G.O. Ms. No.1184 Dated the 1st September, 2003

Read:

G.O. Ms. No.1080, Public (Buildings) Department, dt. 1.9.2003

O R D E R:

In the G.O. read above, sanction was accorded for the construction of a new full-fledged Secretariat Complex including Legislative Assembly Hall with a total floor space of about 10 to 12 lakhs sq.ft. in the site measuring about 43.20 acres at Kottur village of Mylapore Triplicane Taluk of Chennai District comprising of lands owned by the Anna University, Madras University and the Government Data Centre. It was also ordered that the Chennai Metropolitan Authority be entrusted with the work of selecting the architect and the construction agency for both the New Secretariat Complex and also the other buildings for the Anna University and Madras School of Economics, through appropriate tender process, monitoring the construction work, mobilizing the required funds for the projects etc. The Member Secretary, Chennai Metropolitan Development Authority was requested to take urgent action as per the above orders and to send the conceptual architectural design proposals of the New Secretariat Complex and the buildings to the Government for selection.

2. Accordingly, the Chennai Metropolitan Development Authority had called for architect services for the New Secretariat Complex by floating open tenders and evaluated the tenders received in complete shape, and short listed them through an evaluation committee. The Member Secretary, Chennai Metropolitan Development Authority recommended four tenderers and their designs for selection by the Government. The Government carefully considered the designs furnished by the four Architect firms recommended by the Chennai Metropolitan Authority and also viewed their presentation in respect of the

New Secretariat Complex. After detailed discussions and taking into account the architectural and aesthetic aspects and other features of the designs, the Government has decided to select the design offered by M/s.C.R. Narayana Rao, Chennai.

3. The Government accordingly directs the Chennai Metropolitan Development Authority to proceed further to entrust the work of Architectural and Consultancy Services of the New Secretariat Complex project to M/s.C.R. Narayana Rao, Chennai, with the scope of work as put to bid.

4. The Member Secretary, Chennai Metropolitan Development Authority is requested to take urgent action as per the orders contained in para 3 above and to send an action taken report to Government before 15.10.2003.

(By ORDER OF THE GOVERNOR)

Lakshmi Pranesh
Chief Secretary to Government"

4. The said architect had already submitted the design for the complex. Civil contractors were selected by tender process and vacant land has been cleared of shrubs. Some of the buildings were to be demolished and arrangements have also been made to accommodate the persons, including the hostel inmates, who will get affected by such displacement. Persons who were to be affected have already expressed their willingness to vacate the premises, which they are occupying, enabling the demolition of buildings. Foundation stone was also laid on the vacant land, which was cleared of bushes. The Chief Minister laid the foundation stone in a function held on 30.10.2003.

5. In the meanwhile, a notification in S.O. 1236(E), dated 27.10.200 3 was issued by the Ministry of Environment and Forests, seeking to introduce sub-paragraphs (g) and (h) after sub-paragraph (f) in Paragraph 3 in the Notification No.S.O. 60 (E), dated 27.1.1994, as also adding new construction projects and new industrial estates as Items 31 and 32 in Schedule I and some other aspects. The above is the draft notification calling for objections. As yet, the said draft notification did not transform into a final notification, so as to operate as law. For better understanding, we reproduce the entire impugned Notification, which reads thus:-
"The Gazette of India
Extraordinary
New Delhi, Monday, October 27, 2003/Kartika 5, 1925
Ministry of Environment and Forests
Notification
New Delhi, the 27th October 2003

S.O.1236(E) - Whereas, the Central Government recognizing the need for evolving procedures for the environmental impact assessment of proposed new towns as also laying down broad guidelines for such assessment,

constituted an Expert Group which submitted its report during 1 989. The Government is implementing various measures for control of pollution from various sources including industrial, domestic, biomedical wastes etc. Under the National River Conservation Plan (NRCP), the pollution abatement works in 157 towns along 31 rivers in 18 States have been undertaken in addition to Ganga Action Plan Phase-I. Despite these efforts, the sewerage system and sewage treatment capacity already provided under NRCP including the Ganga Action Plan are not adequately maintained by the respective local bodies, resulting in partial achievement of the objectives of NRCP;

And whereas, such projects have adverse impact on environment including wetlands, lakes, rivers, and coastal waters posing serious health hazards to the local population including children. Even for construction of a house in a Panchayat area, plans are approved only after the provision of a septic tank. For an industrial project, an effluent treatment plant is necessary and for an industrial estate a common effluent treatment plant is necessary. On the other hand, local bodies / development authorities in towns have been approving new construction projects of various categories and sizes without any concern for the environment;

And whereas, the Hon'ble Supreme Court in the Writ Petition (C) No.725 of 1994 with I.A.No.20,21,1207,1183,1216 and 1251 in Writ Petition No.4677 (C) of 1985 in the matter of news item Hindustan Times titled "And Quiet Flows the Maily Yamuna" ..Vs.. Central Pollution Control Board and others, observed on 4th December, 2001, as under:

"The learned Solicitor General submits that in relation to town planning the provisions of the Environment (Protection) Act, 1986 would be applicable and whenever any decision is taken in regard to town planning, environment impact assessment must first be undertaken, clearance obtained and then the decision taken. Unfortunately, the Rules under Environment (Protection) Act as such do not cover town planning. In regard to this aspect, the learned Solicitor General wants to address arguments and give suggestions to the Court as to what effective orders can be passed with a view to prevent the river Yamuna from becoming history. The Central Government should also consider and inform the Court on the next date of hearing whether it should not amend the Rules under the Environment (Protection) Act so as to require the environment impact assessment for the purposes of the town planning Acts".

And whereas, the Central Government took a serious view of continuing pollution of rivers and other water bodies and in order to control further deterioration of water quality in these water bodies, it is felt necessary that new projects relating to construction of new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals, office complexes for 1000 persons and above or discharging sewage of 50,000 litres / day and above or with an investment of Rs.50 crores and above and new industrial estates having an area of 50 hectares and above and the industrial estates irrespective of area if their pollution potential is high, are proposed to be brought under the purview of Environment Impact Assessment Notification:

And whereas, the proposal shall be subject to the following conditions, namely;

(1) Project proponent intending to implement the proposed project in a phased manner or in modules, shall be required to submit the detailed project report of the entire project covering all phases or modules for appraisal under Environment Impact Assessment.

(2) Project proponent intending to take up projects of very urgent nature during the pendency of the draft Notification shall be required to submit a certificate from the concerned local bodies / authorities with regard to the availability of sewage treatment capacity in their existing sewage treatment plant for incremental quantity to be generated by the project. Such projects can be considered by the Government for environmental clearance on a priority basis on the receipt of the complete proposal with all relevant documents subject to verification of such documents.

(3) New construction projects where construction work has not come up to the plinth level on the date of issue of this draft Notification shall require clearance under the Environment Impact Assessment Notification.

(4) In the case of new Industrial Estates, where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost on the date of issue of this draft Notification shall require clearance under Environment Impact Assessment Notification.

(5) In respect of projects covered under Clauses 3 and 4 above, application for environmental clearance shall be submitted by the project proponent within 30 days of finalization of this draft Notification.

And whereas, by Notification of the Government of India in the Ministry of Environment and Forests No.S.O.60(E). dated the 27th January, 1 994 the Central Government imposed certain restrictions and prohibitions on the expansion and modernization of any activity or the undertaking of any project unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified therein;

Now, therefore, the following draft amendments to the said Notification, which the Central Government proposes to make in exercise of the powers conferred by sub-section (1) read with clause (v) of subsection (2) of Section 3 of the Environment (Proection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Proection) Rules, 1986, for the information of all persons likely to be attached thereby; and notice is hereby given that the said draft amendments shall be taken into consideration after the expiry of a period of sixty days from the date of on which copies of the Gazette containing the said draft amendments are made available to the public;

Any person desirous of making any objection or suggestion in respect of the said draft amendments may forward the same in writing for consideration of the Central Government within the period so specified to the Secretary,

Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi - 100 003.

DRAFT AMENDMENTS

In the said Notification, -

(i) in para 3, after sub-para (f), the following sub-paras shall be inserted, namely;-

"(g) any construction project falling under entry 31 of Schedule I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals, office complexes for 1000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000 (Rupess fifty crores) or below;

(h) any industrial estate falling under entry 32 of Schedule I including industrial estates accommodating industrial units in an area of fifty hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high;
Explanation :- Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the detailed project report of the entire project covering all phases or modules for appraisal under Environment Impact Assessment Notification";

(ii) in Schedule I, after item 30, the following items shall be added namely:-

"31. new construction projects

32. new industrial estates";
(iii) in Schedule - II, in para 5, for sub-para (f), the following sub-para shall be substituted, namely -

"(f) (i) The quantum of existing industrial effluents and domestic sewage with incremental load to be released in the receiving water body due to the proposed activities along with treatment details;

(ii) The quantum and quality of water in the receiving body before and after disposal of solid wastes including municipal solid wastes, biomedical wastes, hazardous wastes, industrial effluents and domestic sewage;

(iv) The quantum of industrial effluents and domestic sewage to be released on land and type of land";

(v) in para 6, for sub-para (a), the following sub-para shall be substituted, namely :-

"(a) Nature and quantity of solid wastes generated including municipal solid wastes, biomedical wastes, hazardous wastes and industrial wastes".

(No.Z-11011/1/2002-IA-I)
R.Chandra Mohan, Jt. Secy.

6. There are two sets of writ petitions, one for enforcement of the above notification and the another for quashing the same. For enforcement is the Writ Petition No.33493 of 2003 filed by four persons viz., C.S. Kuppuraj, S.M. Arasu, T.S. Balasubramanian and P. Krishnan, for the issuance of Writ of Mandamus to direct the respondents (17 respondents) to desist from any move to commence the construction of any New Secretariat building at Kotturpuram or to demolish the buildings situated in the campus of the Anna University, Government Data Centre, Madras School of Economics, Anna Gem Science Park School, Madras University's Vice Chancellor's Residence, for the construction of buildings for the purposes of the proposed Secretariat complex at Kotturpuram. These petitioners are hereinafter referred to as the Petitioners-I. The other writ petitions viz., W.P. Nos.35205, 35517, 35691, 35 692 and 35825 of 2003, are filed opposing the notification, seeking the relief to issue a Writ of Declaration declaring that the Notification issued by the first respondent (Ministry of Environment & Forests, Union of India) dated 27.10.2003 in S.O. No.1236 (E) and published in the Government of India Gazette on 27.10.2003 as illegal, unconstitutional, ultra vires and unenforceable. These petitioners are hereinafter referred to as the Petitioners - II.

7. The Petitioners - I plead that College of Engineering, Guindy, which is affiliated to the Anna University and located within its premises, gets disturbed and has to be re-located elsewhere if construction of new Secretariat building is permitted and so also some other educational institutions and the students' hostel and also Science City proposed in G.O. No.64, dated 24.1.1995. The other ground taken is that the Government having announced plans to shift the Secretariat from the existing Fort Saint George to Thiruvidandhai Village on the East Coast Road and Thaiyyur Village on the Old Mahabalipuram Road and issued G.O. Ms. No.241 dated 19.9.2003, freezing all developments on the proposed site, cannot waste money now for a temporary Secretariat costing Rs.500 crores and wasting about 45 acres of land. They also contend that there is no necessity to shift the Secretariat from the present location, laying emphasis that it is a historic building with a new construction named 'Namakkal Kavignar Maaligai', added about 25 years back and that there is no explanation as to why a building constructed so recently, which is expected to last 100 years, has suddenly been discovered to be structurally unsound. A contention was also raised that the proposal of the Government places a huge burden on the public exchequer and that it is not cost-effective and that the petitioners are very much concerned about the financial impropriety in the present financial situation. They also go into the facts of indiscriminate borrowings and unprecedented growth in the fiscal and revenue deficits in the context of burden on the non-developmental expenditure resulting in complete depletion of cash reserves. Their concern is about the proposal of the Government to borrow Rs.500 crores for an unproductive construction and then further incur a cost of Rs.5 0 crores for demolishing the building constructed recently. Apart from the cost factors and also the necessity factor, the petitioners show the concern about the

social and environmental impact on the ground that the Government did not consult all the stakeholders, especially the citizens concerned with the civic amenities and the students and teachers, and it would affect the city's lung space and also disturbance to the residential localities. Added to that, they project the impugned notification, which brings new projects relating to construction of new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals, office complexes for thousand persons and above or discharging sewage of fifty thousand litres a day and above or with an investment of Rs.50 crores and above and new industrial estates having an area of 50 hectares and above and industrial estates irrespective of areas, if their pollution potential is high, under the purview of Environment Impact Assessment notification. It is the contention of the petitioners that it is imperative for the Government to comply with the legal requirements before proceeding with the work of the construction of new Secretariat complex. They also assert that if such proposals are made, they are not likely to be approved.

8. The Petitioners - II are the realtors and the builders who oppose the notification on the ground that the same cannot apply to nonindustrial projects or buildings, that the policy of the State Government cannot be questioned, that the impugned notification cannot restrict the construction of the buildings other than industrial units and that in any event, the impugned notification comes into effect only after consideration of objections and issuing final notification and that draft notification cannot be enforced right now.

9. There are several respondents impleaded but main are (i), the Central Government, (ii) the State Government and (iii) the Chennai Metropolitan Development Authority (CMDA). The planning part is made by CMDA and in fact, it has been notified as the nodal agency for the execution of the instant project and to take all the necessary steps in that regard.

10. The Central Government takes a stand that Environment Protection Act, 1986 is a legislation by the Central Government traceable to Entry 13 of List 1 of Schedule 7 of Constitution, that the Act and the Rules framed thereunder as also Notifications issued are applicable to all the projects - industrial or otherwise - and that writ petitions filed opposing the notifications are premature as still the draft notification is at the stage of receiving objections and consideration and only when objections are overruled and final notification is issued, the Rule will come into being and that until then, no cause of action arises.

11. The State Government has taken a stand supporting the Petitioners-II, who are opponents of the notification and submitting that the proponents (Petitioners - I) of the notification have got no locus and that construction of a Secretariat is a policy decision of the Government and even if it involves expenditure, such economic policy of the Government, including the policy to construct Secretariat at a place chosen by it, is beyond the pale of judicial review, that construction of Secretariat building cannot be brought within the ambit of the notification and in any event, the draft notification is not the law as on date and it can come into operation only

after consideration of objections and overruling the same and then issuance of the final notification and that until such transformation of draft notification into final notification, no fetters can be placed on the State Government to construct a new Secretariat building as proposed. It has also explained about the finances, environmental measures, steps taken to rehabilitate the persons and institutions, which are to be disturbed, including the steps which are planned to be taken to deal with all aspects of sewerage, drainage, water and other facilities and other related aspects.

12. The Chennai Metropolitan Development Authority fully supports the view of the State Government.

13. While Mr. Sriram Panchu, learned Senior Counsel, appeared for the petitioners in W.P. No.33493 of 2003, Mr. Mohan Parasaran and Mr. R. Thiagarajan, learned Senior Counsel, and Ms. R. Latha, learned counsel, appeared for the petitioners in the other writ petitions. Mr. N.R. Chandran, learned Advocate General, appeared for the State Government and C.M.D.A and Mr. V.T. Gopalan, Additional Solicitor General, appeared for the Central Government while Mr. G. Masilamani, Senior Counsel, appeared for the Anna University.

14. Mr.Sriram Panchu, learned Senior Counsel has submitted that the financial position is bad in our State, that the existing Secretariat Building in Fort St.George itself is sufficient, and that there is no need for any new Secretariat Building, particularly, in view of the fact that for future needs a 15 year plan has already been formulated in G.O. Ms. No. 64, dt.24.1.1995 to acquire a vast extent of land in Science City, and the said plan is still existing, and only for temporary Secretariat, the second building is not necessary, particularly, taking the financial crunch of the State into consideration. He further submitted that assuming that the new Secretariat is inevitable, it can only be constructed at the place, which is environmentally suitable and that the place chosen is environmentally not suitable and it will cause environmental pollution. He further submitted that Science City has been planned by the Government itself by G.O.Ms.No.64 dt.24.1.1995 which is very much in vogue and that cannot be defeated by building the new Secretariat Building at Kotturpuram, and particularly, affecting the rights of several owners surrounding that area, and shifting the prestigious institutions like College of Engineering of Anna University and also other educational institutions, and the students' hostel housing more than thousand students. He also submitted that the plan undertaken is violative of the provisions of Tamil Nadu Town and Country Planning Act, 1971, and the rules framed thereunder. His last argument is that in any event the State Government cannot proceed with the construction, unless environmental clearance is obtained as contained in Central Government's notification dated 27.10.2003.

15. Mr.R.Thiagarajan and Mr.Mohan Parasaran, learned Senior Counsel, and Ms.R.Latha, learned counsel appearing for the writ petitioners opposing the notification, strenuously contended that the impugned notification is arbitrary and unconstitutional, that the same has not partaken the character of a rule, that it is only at the draft stage, and that even if

it is finally approved can only act prospectively and not retrospectively. They further submitted that the notification is only applicable for industrial establishments or factories, as the case may be, and not for other kinds of structures. They also submitted that the matter relating to construction of buildings is within the legislative field of the State under List II to Schedule - VII of the Constitution of India, that the Central Government has got no say on this aspect, and that the Environment Act has got no application as the matter is covered by Tamil Nadu Town and Country Planning Act, 1971.

16. The learned Advocate General supported the argument of the above learned counsel for the petitioners opposing the notification stating that the Central Government has got no say in the matter relating to construction, that the impugned notification is only applicable for the construction of buildings/factories for industrial purposes, that even assuming that notification takes final shape it can only be applicable prospectively from the date of issuance of final notification and gazetting of the same, that at this stage of draft notification, the rule is still born and cannot be made applicable to the construction of the new Secretariat at Kotturpuram, that all aspects of environment have been taken into consideration and will be followed in future, that the only thing to be taken care of is sewerage and that is properly planned and will be executed, that the vacant land has been cleared of bushes and made ready, and the foundation stone was laid on 30.10.2003, and that at this stage no writ can be issued. He further raised the argument of locus standi against the Petitioners-I supporting the notification. He also submitted that it is not for any individual or any authority to command the State Government either to construct or not to construct a Secretariat or construct at a particular place or site and a policy to construct a new Secretariat at a chosen place cannot be attacked and even financial implications come within the ambit of the economic policy of the Government and no intrusion can be made into to the said economic policy, and the Government discharging sovereign functions, is the authority to decide as to whether a new Secretariat has to be constructed and the place of such construction and also the estimates and expenditure there of. He submitted that the old structure has become dilapidated, that even the structure constructed in the year 1975 has given way to cracks and leakages, and that the Government has taken cognizance of this and at first wanted to construct new Secretariat in the place of Queen Mary's College, Chennai but now has reconsidered the matter and chosen the present site, and having made all preparations, also laid the foundation stone and that it cannot be interdicted from proceeding further.

17. Mr.V.T.Gopalan, learned Additional Solicitor General for India appearing for the Central Government has supported the issuance of notification on the ground that big structures with more sewerage needs environmental clearance, and that the Petitioners-II opposing the notification have got no locus standi to question the notification as they are not immediately affected and contended that there is no cause of action as yet to file the writ petitions, and that they are premature.

18. In view of the rival contentions, the following points emerge for consideration;

(i) Whether there is any locus for the petitioners either opposing or supporting the notifications?
(ii) Whether State Government's decision to construct a new Secretariat at the present site is justiciable?
(iii) Whether there is any intrusion by the Central Government into the powers of the State Government relating to the matters of construction covered by Tamil Nadu Town and Country Planning Act, 1971?
(iv) Whether the impugned notification is applicable for only industries and not for other buildings?
(v) Whether the impugned notification has got the force of law and if not whether restriction on construction of the new Secretariat can sustain even before issuance of final notification?

19. Points (i) and (ii) - Locus Standi and Justiciability

The plea of locus standi has to be dealt with in two parts, i.e. in the context of the Petitioners-I, opposing the new Secretariat building and Petitioners - II questioning the notification. In so far Petitioners - I are concerned, their plea against the Government's decision to construct new Secretariat Complex is untenable. The construction of new Secretariat building is a policy decision of the Government. A Government elected by the people and exercising the sovereign functions of the State is entitled to take decisions regarding the location of its Secretariat, including the shifting thereof to another place. The sovereign function of the State cannot be questioned unless it is shown to be violative of any of the fundamental rights enshrined in the Constitution. From the facts stated and the legal contentions urged, it is not made out that the Government's decision to construct a new Secretariat offends any of the fundamental rights of Petitioners - I. Among the four petitioners in W.P. No.33493 of 2003, two are retired Chief Engineers of Public Works Department and also alumini of College of Engineering, Anna University and the other two petitioners are the residents of Kotturpuram. Their plea that the existing building is strong and also is sufficient to house the Secretariat and that the State is not in a sound financial position to take up the new Secretariat building construction and that such plans burden the State exchequer etc. is untenable. In fact, such attempts by the above petitioners invade the sovereign functions of the State Government as, as already stated above, they are within the domain of the State Government and not attracting the field of judicial review. It is not for the petitioners to dictate the Government as to where the Secretariat is to be located and as to the sufficiency or otherwise of the present accommodation and the necessity to shift to other place and even if it is to be shifted, to which place it has to be shifted. The petitioners cannot raise any voice in that regard. In fact, invoking the PIL jurisdiction in this regard is distressing as it is a misuse of the public law remedy, which has to be invoked only for the purpose of enforcement of fundamental right on the legal principles stated by the Supreme Court in BALCO EMPLOYEES' UNION (REGD) v. UNION OF INDIA (2002) 2 SCC 333). It was held by the Supreme Court in BALCO's case (referred supra) that PIL was not meant to be a weapon to challenge the financial or economic decisions, which are taken by the Government in exercise of their administrative power and judicial interference by way of PIL is available if there is injury to public because of dereliction

of constitutional or statutory obligations on the part of the Government and that every matter of public interest or curiosity cannot be the subject matter of PIL and that the Courts are not intended to nor should they conduct the administration of the country. It was also held by the Supreme Court that PIL is not a pill or panacea for all wrongs and it was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure, which was innovated where a public spirited person files a petition, in effect on behalf of such persons, who on account of poverty, helplessness or economic and social disabilities, could not approach the Court for reliefs.

20. It is too much for the petitioners to plead that the State Government cannot take a decision in exercise of its sovereign functions as to the location of the Secretariat. It is for the Government to decide whether in the exigencies, shifting of Secretariat from the present place is necessary and the Government alone can decide with regard to the financial implications and it is not for the Court to encroach upon the Government's power. The emphasis, which is laid on independence of judiciary citing Article 50 of Indian Constitution, should also be equally made applicable to the Government's sovereign functions without interference by any outside Authority. Neither the private interest litigation nor the public interest litigation can be allowed to make such unconstitutional intrusion into the sovereign functions of the State Government. When the people elect the Government, the elected Government is entitled to exercise its sovereign functions in accordance with Constitutional provisions and in a matter like this, where a policy decision has been taken by the Government to shift the Secretariat to a new place, be it as an interim measure or otherwise, the only place of debate is on the floor of the Assembly and nowhere else.

21. As already stated above, the Courts intervention by judicial review comes in only when there is infringement of either constitutional rights or statutory rights of the petitioners and not otherwise. The Petitioners - I have failed to establish that any of their constitutional or statutory rights have been violated. Merely because they were either the alumni of engineering college or residing in the surroundings cannot give them locus to interdict the Government from proceeding further with the construction of the new Secretariat complex. It can't be assumed that the Government has not taken all the aspects into consideration, while taking a decision to construct the new Secretariat complex at this place including the environmental aspects. The petitioners cannot be heard to make general allegations of violation of Town and Country Planning Act. Further, when the constructions are made, even smaller ones, there will be some kind of discomfort to the persons residing in the surroundings. In a civic society, that much tolerance is necessary. Construction of new Secretariat complex may cause some temporary discomfort to the neighbours, but on that count, the construction 0cannot be prohibited. There is no reason to believe that the Government would not take all such care to minimize the discomfort to neighbours. The larger public interest of having the new Secretariat complex certainly over- rides the minor discomforts to be faced by the miniscule of citizens.

22. Mr. V.T. Gopalan, learned Additional Solicitor General, submits that the Petitioners - II do not have locus standi to question the notification and that in any event, the matter is premature and there is no cause of action as yet to challenge the draft notification at this stage, when the objections are called and they are yet to be considered. So far as the locus standi aspect is concerned, the opponents of the notification have got grievance as the impugned notification curtails their rights and they are traceable to Article 14 and Article 19 (1) (g) and also the constitutional right under Article 300-A of the Constitution and as such there is locus standi for the opponents of the notification.

23. With regard to the other plea of Mr. V.T. Gopalan, learned Additional Solicitor General, that the writ petitions are premature, we agree with his contention. The notification is not a final one and has only proposed to issue final notification and invited objections. All the objections which are raised by either the State Government or the opponents of the draft notification have to be considered by the Central Government and at this stage, it cannot be predicted that the draft notification will culminate into a final one.

24. Rule 5 (3) (d) of Environment (Protection) Rules, 1986, has been framed in exercise of the rule-making power conferred by Section 25 of the Environment (Protection) Act, 1986 in general and Section 6 thereof in particular. It reads thus,

"5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas.-

1. ------

2. -----

3. (a) -----

(b) ----

(c) ----

(d) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within three hundred and sixty five days from such date of publication, impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area."

Now, it is only at the stage of considering the objection. It is needless to mention that the Central Government will have to consider all such objections which have been raised by any person, authority or the State Government and then take final decision by assigning reasons. Points (i) and (ii) are answered accordingly.

25. Points (iii) and (iv)

In view of our finding to Points (i) and (ii), Points (iii) and (iv) need not be addressed as they are to be considered by the Central Government.

26. Point (v)

In the impugned notification, preamble is stated before stating the

draft amendments. In the preamble portion, i.e. paragraph 3, a restriction has been placed on new construction projects not to proceed further if the construction work has not come up to the plinth level on the date of the issuance of the impugned notification, until clearance by the authority, under the Environment Impact Assessment Notification. Amendments are only at the proposal stage and objections have been called for and it cannot be said that calling of objections is an empty formality. Objections have got to be considered in an objective manner and by addressing all of them and by assigning reasons. The proposed amendments creating new obligations can only be prospective in operation. There need not be even interpretation on this aspect as the Rule itself is clear that only after consideration of objections and overruling the same and making the draft amendments into final one, imposition or prohibition or restriction, as the case may be, come into force. Under the guise of preamble leading to the issuance of draft notification, the Central Government cannot impose restrictions at the stage of draft notification. There is neither authority to frame a rule or issue

notification with retrospective effect. In fact, the Rule does not empower the imposition of restriction on the date of draft notification. Point (v) is answered accordingly.

27. In the result, we hold that the new Secretariat project of the State Government initiated under G.O. Ms. No.1080, Public (Buildings) Department, dated 1.9.2003 can proceed further and the projects as may have been undertaken by the Petitioners - II also can proceed further. W.P. No.33493 of 2003 is dismissed. W.P. Nos. 35205, 35517, 356 91, 35692 and 35825 of 2003 stand allowed to the extent indicated above. Consequently, W.P.M.P. Nos.40556, 42562, 43720, 45348 to 45350, 4 2791, 42792, 43882, 43181, 43366 to 43369, 43544 and 43545 of 2003 are closed.

Sm/pv

LR Entry : Yes
Internet : Yes

W.P. Nos.33493, 35205, 35517, 35691, 35692 and 35825 of 2003
and
W.P.M.P. Nos.40556, 42562, 43720, 45348 to 45350, 42791, 42792, 43882 , 43181, 43366 to 43369, 43544 and 43545 of 2003

The Hon'ble The Chief Justice
and
K.Gnanaprakasam,J
(The Order of the Court was made by The Honourable The Chief Justice)

After the judgment has been pronounced, Mr.Sriram Panchu, learned senior counsel appearing for the petitioners in W.P.No.33493 of 2003 sought for grant of leave to file appeal under Article 133 of the Constitution of India. In our considered view there is no such substantial question of law required to be decided by the Supreme Court. Hence, the leave is refused.

pv/ (B.S.R.,CJ) (K.G.P.J)
19.04.2004